

May 29, 2012

Victor James  
Acting General Counsel  
P O Box 4034  
Sacramento, CA 95812-4034

Re: Your Request for Advice  
**Our File No. A-12-067**

Dear Mr. James:

This letter responds to your request for advice on behalf of Jack Shine regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter is based on the facts presented in your request. The Commission does not act as a finder of fact when issuing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, our advice is limited to the provisions of the Act. We do not address issues related to common law conflicts of interest, Government Code 1090, or an agency’s incompatible activities statement.

### **QUESTION**

Does a California Housing Finance Agency board member have a disqualifying conflict of interest if he participates in decisions regarding the property sales (or timing of such sales) that have direct implications on a non-profit corporation he began and manages that could buy said properties?

### **CONCLUSION**

The board member does not have a cognizable economic interest under the Act and therefore does not have a disqualifying conflict of interest. Please be aware, however, that other law may restrict your business arrangement.

### **FACTS**

You are the Acting General Counsel for the California Housing Finance Agency (“CalHFA”) and you represent Board Member Jack Shine. The CalHFA is administered by an

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

11-person board of directors. CalHFA offers “innovative affordable housing programs for low and moderate income first-time homebuyers in California.” To that end, CalHFA purchases single-family loans from approved lenders and holds the deeds of trust, servicing some loans and foreclosing when necessary. In the past, CalHFA has made full-credit bids at the foreclosure sale of these properties, bidding the amount due on the loan. Typically, CalHFA is the highest bidder, and the property reverts to its ownership; these properties are called “real estate owned” properties or REOs. At that point, CalHFA would decide whether to renovate and list the REO or to sell “as is.”

CalHFA is in the process of changing its decision-making procedures, however. In the future, the board will decide before a foreclosure sale whether it is economical for CalHFA to make a full-credit bid at the sale or sell the property “as is” at the time of the foreclosure sale. With this model in place, CalHFA hopes to minimize its losses.

Mr. Shine created a non-profit (501(c)(3)) corporation called American Beauty Homes for Veterans (“ABHV”) that intends to purchase REOs from CalHFA after the foreclosed properties revert to CalHFA’s ownership, but before CalHFA makes repairs to the properties to sell them. Mr. Shine will take a one dollar per year salary in exchange for his services in acquisition, financing, and design of the homes. ABHV would pay CalHFA a fee for an exclusive option to purchase “as is” REOs at the full appraised value as determined by CalHFA’s hired appraiser. During a specified period of time, CalHFA would not offer the property to the public until ABHV decides whether to exercise its option to buy the REO. The sale would be “as is,” the price would be non-negotiable, and the option would expire if not exercised.

## ANALYSIS

The Act’s conflict-of-interest rules prohibit a public official from making, participating in making, or using his or her official position in any way to influence a governmental decision in which the official knows, or has reason to know, that he or she has a “financial interest.” (Section 87100.) Section 87103 provides that a public official has a “financial interest” in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the official’s economic interests.

Under the Act, a conflict of interest exists only when a public official has a financial interest in a particular governmental decision. To determine whether a public official has a “conflict of interest” in a specific governmental decision, we employ a standard eight-step analysis outlined in Regulation 18700(b).

**Steps One and Two: Is Mr. Shine a Public Official Making, Participating in Making, or Influencing a Governmental Decision?**

Mr. Shine is a member of the board of directors of the California public agency, California Housing Finance Agency. He is a public official pursuant to this position. (Section 82048(a).)

When Mr. Shine votes as a board member with the CalHFA, he is making a governmental decision. You have not detailed particular decisions, but we assume that there will be upcoming decisions for the board regarding their property holdings that have gone, or will go, into foreclosure.

**Step Three: What are Mr. Shine's Economic Interests?**

A public official has a financial interest in a decision within the meaning of Section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any one of five enumerated economic interests. (Section 87103; Regulations 18703-18703.5.)

The applicable economic interests include:

- An interest in a business entity in which a public official has a direct or indirect investment of \$2,000 or more. (Section 87103(a), Regulation 18703.1(a).)
- An interest in any business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation 18703.1(b).)
- An interest in real property in which a public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b), Regulation 18703.2.)
- Any source of income, including promised income, to the public official that aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c), Regulation 18703.3.)
- Any source of gifts to the public official if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e), Regulation 18703.4.)
- A public official also has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. This is also known as the "personal financial effects" rule. (Section 87103, Regulation 18703.5.)

ABHV is not a "business entity" under the Act. (Section 82005.) Because you have indicated that Mr. Shine will receive compensation of one dollar per year, his income does not meet the \$500 threshold required for a source of income under the Act and, accordingly, he would not be restricted by the nexus test set forth in Regulation 18705.3(c). Based on your facts, there is no cognizable economic interest under the Act that would give rise to a potential conflict of interest.

Our authority is limited to the provisions of the Act. Other bodies of law may also be implicated by your proposed involvement with ABHV. For example, Government Code Section 19990 provides for each state agency to develop a statement of incompatible activities, which includes specific enterprises or employment “clearly inconsistent, incompatible, in conflict with, or inimical to” the duties of the agency’s officials and employees. You must refer to your agency’s statement of incompatible activities for further details. Similarly, Government Code Section 1090 regulates, and generally prohibits, contractual relationships between state agencies and persons employed by those agencies. The Attorney General’s office can provide you with assistance in determining your duties under Section 1090. Additionally, common law conflicts of interest may apply.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Heather M. Rowan  
Counsel, Legal Division

HMR:jgl